APPENDIX F – Q&As

Notes:

1. The first section of this document is included to provide further explanation of the applicability paragraph and to assist in responding to questions addressed in Sections 2 and 3. Although the Congress is directing the Corps to require feasibility study cost sharing, it has also imposed a moratorium on the execution of any new FCSAs or PCAs in fiscal year 2006. The applicability paragraph was developed with the intent to allow work to continue during the moratorium and provides for a period of time (1 October 2006 to 31 December 2006) for execution of any required FCSA or PCA.

2. The questions shown in Sections 2-7 are taken almost verbatim from questions posed by several MSCs and districts. The HQUSACE response to each question is shown in italics.

SECTION 1 – Appendix F, Paragraph F-1.b. - Applicability of New Implementation Procedures And Transition of Ongoing Projects

1. Feasibility Phase:

a. For any project with the decision document completed and approved prior to 31 January 2006 – the planning costs shall be shared in accordance with the rules covering cost sharing of planning costs, shown below, that were contained in Appendix F of ER 1105-2-100, dated 22 April 2000. (Note: Preliminary Restoration Plans (PRPs) are not considered decision documents)

i. Sec 14/208 – all planning costs in excess of $40,000 will be included in total project costs in the PCA for the project and shared with the non-Federal sponsor in accordance with the cost share formula for construction. The first $40,000 of planning costs are a 100% Government responsibility.

ii. Sec 204/206/1135 – all planning costs will be included in total project costs in the PCA for the project and shared with the non-Federal sponsor in accordance with the cost share formula for construction.

iii. Sec 103/107/111/205 – all planning costs in excess of $100,000 are shared equally with the non-Federal sponsor pursuant to the provisions of a Feasibility Cost Sharing Agreement (FCSA). The first $100,000 of planning costs are a 100% Government responsibility. None of the planning costs will be included in the PCA.

b. For any project with the decision document **not** completed or approved prior to 31 January 2006: (Note: PRPs are not considered decision documents)

i. Feasibility phase is currently under way and the decision document will be completed and approved prior to 31 December 2006. – A FCSA is not required. However, all feasibility phase costs in excess of $100,000 will be shared 50/50 with the non-Federal sponsor executing the PCA in accordance with the provisions of the PCA. The value of LERRDs cannot be applied to the non-Federal sponsor's share of feasibility phase costs. The first $100,000 of the feasibility phase costs are a 100% Government responsibility. Language has been proposed in the new Section 14 model currently being drafted that would allow the sponsor to pay their share of feasibility phase costs in 4 equal payments over a two year period (one payment every 6 months) beginning after an accounting of feasibility phase costs. This accounting of feasibility phase costs would be performed no later than 60 days after execution of the PCA.

ii. Feasibility phase is currently underway and the decision document will **not** be completed or approved prior to 31 December 2006. - A FCSA must be executed prior to 31 December 2006 (assuming no act language to the contrary). The costs addressed by the FCSA will be all the feasibility phase costs starting at the study's initial work allowance. The non-Federal sponsor executing the FCSA must pay 50 percent of the feasibility phase costs (except for the first $100,000 of such costs which are a 100% Government responsibility) pursuant to the provisions of the FCSA. Any PRP costs will be included in the initial $100,000. Language is being developed for the FCSA to address the schedule for the non-Federal interest's payment of any feasibility phase costs incurred prior to the effective date of the FCSA. None of the feasibility phase costs will be included in the PCA.

2. Design phase:

a. Feasibility phase decision document was completed and approved prior to 31 January 2006 and design efforts are underway and will be completed by 31 December 2006. - It is not necessary to stop work on design and execute a PCA if the design work will be completed by 31 December 2006. Upon completion of design, an agreement addressing performance of construction only may be negotiated and executed (assuming no act language to the contrary) upon HQUSACE approval to proceed with the agreement in accordance with Section II, paragraph F-11 of Appendix F and current law and policy. All costs incurred for design will be included in total project costs in the PCA for the project and shared with the non-Federal sponsor in accordance with the cost sharing formula for construction pursuant to the provisions of the PCA. In addition, any planning costs for Section 14/208/204/206/1135 projects will be included in total project costs in the PCA for the project and shared with the non-Federal sponsor in accordance with the cost sharing formula for construction pursuant to the terms of the PCA. If requested by the non-Federal sponsor, the design may be suspended until execution of a PCA in accordance with Section II, paragraph F-11 of Appendix F.

b. Feasibility phase decision document was completed and approved prior to 31 January 2006 and design efforts are underway but will **not** be completed by 31 December 2006. – A PCA addressing both design and construction must be executed prior to 31 December 2006 (assuming no act language to the contrary) upon HQUSACE approval to proceed with the agreement in accordance with Section II, paragraph F-11 of Appendix F and current law and policy. All costs incurred for design will be included in total project costs in the PCA for the project and shared with the non-Federal sponsor in accordance with the cost sharing formula for construction

pursuant to the provisions of the PCA. In addition, any planning costs for Section 14/208/204/206/1135 projects will be included in total project costs in the PCA for the project and shared with the non-Federal sponsor in accordance with the cost sharing formula for construction pursuant to the terms of the PCA.

3. New PCAs – Any PCAs executed after 31 January 2006 should address performance of both design and construction of the project, unless design was completed prior to 31 December 2006. Optional language is being developed for the new CAP models that will make the models applicable to either performance of both design and construction or performance of construction only.

4. Existing PCAs – The new procedures shall not apply to any project with an executed PCA as of 31 January 2006.

SECTION 2 – Appendix F, Paragraph F-10 - Feasibility Phase

S2-Q1: Based on paragraph F-1 of Appendix F is it a correct interpretation that the sponsor will be responsible for 50 percent of the sunk feasibility phase costs in excess of the initial Federally funded portion of $100,000 expended prior to 31 December 2006 even though an FCSA has not been executed?

S2-A1: *The date of approval of the decision document is the key in determining the percentage of feasibility phase costs the sponsor will be responsible for when a FCSA has not been executed (for 14/208/204/206/1135 projects).*

a. If the decision document was completed and approved prior to 31 January 2006, the percentage of feasibility costs the sponsor will be responsible for shall be in accordance with the rules covering cost sharing of planning costs that were contained in Appendix F of ER 1105-2-100, dated 22 April 2000. (See Section 1, paragraph 1.a. above for further details).

b. If the decision document was not completed and approved prior to 31 January 2006 but it will be approved by 31 December 2006, even though a FCSA has not been executed, the sponsor shall be responsible for 50 percent of feasibility phase costs, in excess of $100,000. The value of LERRDs cannot be applied to the non-Federal sponsor's share of feasibility phase costs. (See Section 1, paragraph 1.b.i. above for further details).

S2-Q2: Based on paragraph F-1 of Appendix F is it a correct interpretation that if a feasibility phase cannot be completed by 31 December 2006, a FCSA will be required to complete the remaining feasibility phase?

S2-A2: *Yes (See Section 1, paragraph 1.b.ii. above for further details).*

S2-Q3: Since we are changing the cost sharing requirements in the middle of some projects, it may not be feasible for our sponsors to get the money to cost share prior to 31 December 2006. From our experience with State of HI attorneys, they will not allow their clients to sign an

agreement obligating them to provide money that they do not have. Will there be any extensions granted to the 31 December 2006 date to accommodate the budgeting processes of our local sponsors?

S2-A3: *No, there will be no extension allowing work to continue without an executed FCSA beyond 31 December 2006. We recognize that some projects may be delayed awaiting funding from some sponsors. Further, we are developing optional language to address a schedule for the non-Federal interest's payment of any costs incurred prior to the effective date of the FCSA. These costs will not be required to be paid in full immediately upon execution of the FCSA, but rather in 4 equal payments over a two year period.*

S2-Q4: For any ongoing studies where a non-Federal sponsor will be responsible for 50 percent of the feasibility phase cost in excess of the initial Federally funded $100,000 thru 31 December 2006, we will be informing our sponsors of this new guidance prior to continued spending of Federal funds. If a sponsor is not be able to cost share a project on sunk or projected future costs during the feasibility phase we may be recommending termination and thus carry over any remaining unspent Federal funds into FY 2007 if it is a named project. Do you concur with this proposed action?

S2-A4: *If a project will be recommended for termination, the HQUSACE CAP Manager should be consulted regarding the disposition of the funds.*

S2-Q5: In reference to our previous CAP guidance under Appendix F dated 22 April 2000, the feasibility phase cost for our environmental CAP authorities were initially Federally funded, then recouped with the total project costs during construction at the same cost sharing requirement for that particular CAP authority. The current guidance now requires a 50/50 cost share which is not consistent with what the District has told the sponsor. Was the intent of this ER to cost share the feasibility phase at the same cost sharing percentage for that particular CAP Project?

S2-A5: *No. The intent of the procedures in the new Appendix F is to establish standard procedures for cost sharing the feasibility phases of all CA authorities.*

S2-Q6: Several projects (1135, 206) are currently well along in the feasibility phase. Upon lifting of the moratorium, can FCSA's for these be executed?

S2-A6: *Yes, if a FCSA is required, once the moratorium is lifted, it can be executed. However, if the decision document can be completed and approved prior to 31 December 2006, execution of a FCSA is not required (See Section 1, paragraph 1.b.i. above for further details). Work on projects that do not require a FCSA should not be impacted by the moratorium.*

S2-Q7: Will the standard model FCSA currently used for GI be acceptable for all CAP authorities?

S2-A7: *The CAP FCSA will be applicable for all authorities. The new CAP FCSA, which will be similar to the current FCSA, will be developed prior to the end of FY06 to include optional*

language to address sharing feasibility costs incurred prior to the effective date of the FCSA and to remove reference to excess study costs which is not applicable to CAP projects.

S2-Q8: If a decision document is completed by 31 December 2006, are the feasibility costs included when a PCA is executed, or does the PCA just deal with the implementation phase costs? If feasibility costs are included, what cost-sharing rules are used - the old ones or the new ones?

S2-A8: *If the decision document is completed and approved after 31 January 2006 but prior to 31 December 2006, the feasibility costs (for 14/208/204/206/1135 projects) will be included in the PCA but shared 50/50 (except for the first $100,000 of such costs which are a 100% Government responsibility) pursuant to the provisions of the PCA (See Section 1, paragraph 1.b.i. above for further details). The value of LERRDs cannot be applied to the non-Federal sponsor's share of feasibility phase costs. These costs will not be required to be paid in full immediately upon execution of the PCA, but rather in 4 equal payments over a two year period.*

S2-Q9: If a Section 206 or 1135 CAP Project, with an approved Preliminary Restoration Plan (PRP) having never received next phase funding was named in FY06 for amount in excess of $100k and proceeds with phase initiation, can they exceed $100k in FY06? I'm sure there are others out there which have already exceeded and won't meet the 31 Dec 2006 deadline. Do they need to stop work as of the date of Appendix F to lock in on an amount for cost sharing?

S2-A9: *As stated in Section 1, paragraphs 1.a. and 1.b. above, Preliminary Restoration Plans are not considered a decision document, therefore, this response assumes the phase initiated will be the feasibility phase. If funds in excess of $100,000 have been provided and the decision document cannot be completed and approved prior to 31 December 2006, work may continue without execution of a FCSA until 31 December 2006. This allows work to continue during the moratorium and provides a period of time (1 October to 31 December) for execution of a FCSA by 31 December 2006. However, a FCSA must be executed prior to 31 December 2006 to continue with work into calendar year 2007.*

S2-Q10: Assume a decision document will not be available by December 2006 for review and approval. 2101 schedules reflect an FY06 schedule in excess of $100k. The District's assumption was that the new model environmental FCSA(s) being written by HQ's would have to include a recovery of costs in excess of 100k upon execution. Appendix F reads, "Any remaining feasibility phase costs, including any Federal costs (above the $100,000) incurred prior to the date of this Appendix , shall be shared equally (50/50) with the non-Federal sponsor pursuant to the terms of the FCSA. What about after the date of the appendix?

S2-A10: *CAP FCSAs will address cost sharing of all feasibility phase costs in excess of $100,000 regardless of whether the costs where incurred prior to or after the effective date of Appendix F.*

S2-Q11: The last version of Appendix F included a phrase that "Basically, for those projects (Sec 206, 1135 + 14) with a completed decision document by 31 Dec 06, a FCSA is not required; however, the sponsor must pay 50 percent of the feasibility costs pursuant to the terms of the

PCA for the project." If this is being interpreting correctly for Santa Ana Aquatic (Feasibility will be finished this FY)-the next step will be negotiate the PCA (FY07) and begin plans and specifications. After signing the PCA the sponsor will have to pay 50% of the feasibility (after the first $100,000) and his portion of plans and specifications for FY07. He cannot use LERRDS to cover his portion of the feasibility. If that is true, can we use the old system (75-25 cost sharing in feas) if we get approval and sign the PCA prior to December 31st?

S2-A11: *No. It is the date of approval of the decision document that determines the cost sharing percentage for the feasibility costs, not the date of execution of the PCA. If the decision document is approved after 31 January 2006 the new cost sharing rules will apply (See Section 1, paragraph 1.b.ii. above for further details). The value of LERRDs cannot be applied to the non-Federal sponsor's share of feasibility phase costs.*

S2-Q12: LRD has a Section 206 PDA from LRC for ITR. In preparation for review, LRD reviewed the new Appendix F, and a quick electronic key word search found no reference to a PDA, except to say that those that are not complete are subject to the Appendix. Instead, there appears to be a section on minimum content of a decision document. Should LRD advise LRC to no longer call this document a PDA, and make sure it meets the minimum content? It sounds like the new appendix is applicable to this study.

S2-A12: *If the decision document (regardless of the name) was not complete and approved as of 31 January 2006, then the decision document should follow the new procedures and content of the decision document identified paragraph F-10.f. of the new Appendix F.*

S2-Q13: Reference Appendix F, pg, 14, Paragraph F-10(e)(2): "Alternatives Formulation Briefing. The second milestone is an Alternatives Formulation briefing (AFB) that takes place after the alternative plans have been formulated**,** and prior to the release of the draft decision document for public review." The last part of the referenced sentence can be interpreted as the NEPA public review (all inclusive) of the decision document (DPR) or can be interpreted as the review of the DPR by the local sponsor (always) and Federal and state agencies and general public as requested. LRC believes the DPR should not be sent out to the general public for review. The DPR should be routinely sent to the local sponsor and to the Federal agencies, state agencies and general public, if requested. The general public review of the DPR clouds the public review as required by NEPA. NEPA requires information that is high quality and that concentrates on environmental issues that are significant to the proposed action. Scoping not only requires us to identify issues of significance but also to deemphasize insignificant environmental issues. The text of the majority of a DPR is not related to environmental issues and cloud and/or are contrary to the intent of NEPA. The NEPA process is supposed to be useful to the public, "to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues" and alternatives" NEPA documents are supposed to be are "concise, clear and to the point" (Section 1500.2 Policy). Review of the DPR by the general public was an issue that surfaced many times during the late 1980s and 1990s by many districts across the Corps. The DPR is routinely provided to the local sponsor and always provided to the state and federal regulatory agencies and the general public, if requested. Routinely mailing out the decision document is not a good idea. There can be significant costs in reproduction and mailing. Rarely did we receive comments on the DPR. As a result, HQ staff (John Belshe and

John Bellinger) told us we did not have to routinely circulate the DPR. When ER 200-2-2 was updated (29 March 1996) this guidance was incorporated into the regulation in paragraph 11, " An EA/FONSI may also be prepared and circulated as a separate, stand-alone document as long as the availability of any associated reports is specified".

S2-A13: *Draft reports and accompanying NEPA documents are always sent to the non-Federal sponsor, Federal and state agencies, and are also sent to anyone that specifically requests a copy of the documents (DPR and/or NEPA). The notice of availability normally lists locations where copies of the report and NEPA document may be accessed by those who did not specifically ask to receive a copy. The notice of availability will also give a POC in the District.*

SECTION 3 – Appendix F, Paragraph F-11 - Design and Implementation Phase

S3-Q1: How are we to implement this guidance for projects that are currently in or about to initiate a plan & spec phase? Scenario: Decision document completed but no PCA. Project is currently in the P&S phase but we do not expect to complete phase by 31 December 2006. Under this scenario and IAW new Appendix F guidance does a PCA for the remaining design work and the implementation phase need to be executed prior to continuing this phase in calendar year 2007?

S3-A1: *Yes, a PCA is required to continue with work into calendar year 2007, upon HQUSACE approval to proceed with the agreement in accordance with Section II, paragraph F-11 of Appendix F and current law and policy. (See Section 1, paragraph 2.b. above for further details).*

S3-Q2: How are we to implement this guidance for projects that are currently in or about to initiate a plan & spec phase? Scenario: Decision document completed but no PCA. Project is currently in the P&S phase. A fully funded AE contract has been awarded for the completion of the P&S. If this work is not completed by 31 December 2006 how are we to implement this guidance? Do we execute a PCA for the remaining design work and implementation phase per this new guidance? Would we be required to obtain the non-Federal cost sharing for that portion which the non-Federal sponsor is responsible for under the cost sharing requirements for that particular authority?

S3-A2: *Yes, a PCA is required to continue with work into calendar year 2007, upon HQUSACE approval to proceed with the agreement in accordance with Section II, paragraph F-11 of Appendix F and current law and policy. (See Section 1, paragraph 2.b. above for further details). The PCA would address all remaining design and construction work and the sponsor's share of costs for design incurred prior to effective date of agreement.*

S3-Q3: How are we to implement this guidance for projects that are currently in or about to initiate a plan & spec phase? Scenario: Decision document completed but no PCA. Project is in the P&S phase and will be completed by 31 December 2006. IAW new guidance new procedures will not apply under this scenario. After completion of the P&S phase we can obtain

project approval & execute PCA if commitment of construction funds have been made. Please confirm this course of action.

S3-A3: *A PCA is required to proceed with construction of the project and may be executed upon HQUSACE approval to proceed with the agreement in accordance with Section II, paragraph F-11 of Appendix F and current law and policy. (See Section 1, paragraph 2.a. above for further details).*

S3-Q4: IAW this new guidance a PCA must now be executed early in the design phase. Since a PCA checklist is required to accompany the final PCA for approval, all environmental documentation must be completed and noted on the checklist. Of particular concern is the Honolulu District which will not be able to meet all environmental compliance requirements at this stage. The State of HI, Department of Health will only issue a "conditional" Water Quality Certification (WQC) and only after completion of construction plans and specifications. In light of this requirement the District has already obtained a waiver from HQ that a "conditional" WQC be acceptable as environmental compliance on the PCA checklist. As a result the PCA checklist must delete the WQC requirement or the new Appendix F modified to allow for full funding of the design phase (Plans & Specs). Please advise as to your recommended action to comply with revised Appendix F.

S3-A4: *HQUSACE is initiating a revision of the CAP checklist to address the new procedures for design and implementation outlined in Appendix F. To accommodate the transition of ongoing projects, the models are being drafted to address performance of design and construction or performance of construction only.*

a. For design and construction agreements, the agreements may be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341). However, the necessary compliance with all applicable environmental laws and regulations will be performed during the design portion of the agreement and <u>must</u> be completed prior to initiation of construction. Further guidance will be issued to POD addressing the unique scenario that occurs for projects within the State of Hawaii.

b. An agreement using the optional language for construction only may <u>not</u> be approved and executed prior to compliance with all applicable environmental laws and regulations including, but not necessarily limited to, NEPA (42 U.S.C. 4321-4347) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

S3-Q5: IAW ER 11-1-321, 28 Feb 05, civil works construction projects exceeding $10.0 M (Current working Estimate) must perform mandatory VE studies. Appendix D of this ER requires a VE study to be performed no later than the 35% completion of design. At 35% your initial design cost alone may easily exceed $100,000. Historically, VE studies have always been performed prior to local sponsors committing to their local cost sharing requirements for construction. As stated in para F-11.c.(1) we cannot request more than $50,000 which would pay for the Federal costs to initiate design <u>AND</u> negotiating the PCA. An example of some

estimated average costs we may be looking at to implement this requirement at the design & implementation phase are as follows:

- Prepare initial drawings & specs (35%) : >$100,000
- VE cost: $30,000-$40,000
- Negotiate PCA for design & implementation phase: $20,000

Based on these conservative figures we will be well over the allotted $50,000 maximum limit that is specified in the new Appendix F that we are able to request prior to executing a PCA. The implementation of this requirement at the time of PCA execution will be extremely difficult for our Districts. In light of this situation, would HQ consider increasing this limit so Districts are better able to negotiate the PCA for this phase?

S3-A5: *No. The purpose of the allotted $50,000 is to negotiate the PCA and initiate design. The rationale for allowing initiation of design with these funds is to eliminate the delay in initiating design by allowing design work to begin concurrently with negotiation of the PCA. It was not intended to have the district prepare a certain percentage of design prior to initiation of cost sharing of design costs. While historically the VE Study may have been performed prior to sponsors committing to cost sharing requirements for construction, with the new procedures of cost sharing of design and construction under one agreement, the VE study should be performed at the appropriate time after execution of the design/construction agreement.*

S3-Q6: What is HQ's goal in completing the model PCA's for the design and implementation phase?

S3-A6: *The Model Development Team is currently drafting a new Section 14 model that addresses design and construction with language identified that if removed will make that model applicable to older projects that need to perform construction only. We started with this model because most of the text developed for this model will be applicable to the other models (such as how to address planning costs or the application of Section 1156). By the end of the FY, the Model Development Team hopes to have new models (either approved or working drafts) for Section 1135 with recreation and without, a CAP FCSA, Section 206 with recreation and without, and Section 205 (structural) with recreation. In the summer, we will develop an implementation plan on how to handle those authorities for which we will not have new models.*

S3-Q7: Will the sponsor have the ability to terminate the PCA at will before construction begins? What evaluation factors will be used to determine if the PCA should be terminated?

S3-A7: *The following must be included in Article XIII of a design/construction PCA. There have been no factors established to consider but this language is intended to allow the Government and sponsor to terminate in those rare cases that <u>both</u> parties mutually agree <u>not</u> to proceed with construction.*

"D. If after completion of the design portion of the Project the parties mutually agree in writing not to proceed with construction of the Project, the parties shall conclude their activities relating to the Project and conduct an accounting in accordance with Article VI.C. of this Agreement."

S3-Q8: In accordance with this new model PCA, what type of funds (Design and/or construction funds?) will be required by the non-Federal sponsor immediately following execution of the PCA for the design & implementation phase? Am I correct to assume that only the non-Fed share for the design portion of this phase will be required prior to initiation of the design & implementation phase with the remaining non-Fed share required at least 30 calendar days prior to the scheduled date for issuance of the solicitation?

S3-A8: *The funding from the sponsor should be requested as follows:*

Not less than ____ days prior to the scheduled date for solicitation of the first contract for design or commencement of design using the Government's own forces the sponsor shall provide the funds required to meet the sponsor's proportional share of financial obligations for design and construction incurred prior to the period of design and construction, the sponsor's proportional share of financial obligations for design and construction for the first contract (if a contract will be awarded in the first period), and the sponsor's proportional share of financial obligations for design and construction incurred using the Government's own forces through the first period. Thereafter, until the construction is complete, 60 days prior to any period in which the Government will incur financial obligations for the project, the Government share notify the sponsor of the funds required to meet the sponsor's proportional share of financial obligations for design and construction any contracts to be awarded in that period and the sponsor's proportional share of financial obligations for design and construction incurred using the Government's own forces through that period.

S3-Q9: Reference paragraph F-11.f.(1), Contract Bid Opening: What is the non-Federal sponsor's required cash contribution? Is it the total estimated amount for the contract? (Have we eliminated the sponsor's ability to pay incrementally?)

S3-A9: *The sponsor's cash contribution referred to in the referenced paragraph is the sponsor's cash contribution that is required for the contract for which the bids are to be opened. At this time, the use of continuing contracts for CAP projects is not allowed so the sponsor must provide their entire share of each contract prior to the solicitation for such contract. The sponsor may still fund any in-house labor or construction performed using the Government's own forces in periodic payments. Option 2 of Article VI.B. of the CAP models is being revised to address this change.*

S3-Q10: The new guidance specifically allows execution of the PCA and eliminates the requirement for a commitment of construction funds prior to such execution? i.e. after the DPR is approved and the project is approved at the MSC for construction, the PCA may be negotiated and executed?

S3-A10: *While the terminology may have changed, HQUSACE approval to proceed with the agreement in accordance with Section II, paragraph F-11 of Appendix F and current law and policy is still required to negotiate and execute the PCA.*

S3-Q11: Several approved projects are currently well along in the P&S phase. Upon lifting of the PCA moratorium, can the PCA's for these be executed?

S3-A11: *Yes, once the moratorium is lifted, the PCA can be executed upon HQUSACE approval to proceed with the agreement in accordance with Section II, paragraph F-11 of Appendix F and current law and policy. However, if the design phase can be completed prior to 31 December 2006, execution of a PCA is not required until the project is ready to proceed with construction. Continuation of work on design that can be completed by 31 December 2006 should not be impacted by the moratorium.*

SECTION 4 – Appendix F, Paragraph F-20.c.(1). – Work on Other Federal Agency Lands

S4-Q1: There is a project that may have a scattering of federal lands in its boundaries (Route 66) depending on a court case on whether land is part of the Middle Rio Grande Conservancy District or the BOR. We will be in Plans and Specs on the project when the new CAP rules become official (probably). According to the revised Appendix F: Work on Other Federal Agency Lands. In the absence of specific legislative authority or direction of the Department of the Army, restoration projects will not be implemented on other Federal lands. Where incidental restoration benefits may accrue to lands owned by another Federal agency, these incidental benefits may be identified, but not included in the benefit evaluation. My interpretation of this would imply we could do nothing physical on the federal land owned (even if leased to another group) that may be interspersed in the project area, without legislative action or Dept of Army approval. Is there any grandfathering in-or once the court determines who owns what-should we look for an exception thru who?

S4-A1: *No, there is no grandfathering. Any request for a clarification of the applicability of, or a deviation from policy should be forwarded for review to the appropriate HQ RIT. The appropriate HQ RIT will prepare a letter responding to the MSC request, which will be coordinated through Headquarters staff and the OASA(CW) staff. In no event can the PCA be executed until the written response from the HQ RIT has been received by the MSC.*

SECTION 5 – Appendix F, Paragraph F-25 - Section 107, River and Harbor Act of 1960, as amended – Navigation Improvements

S5-Q1. Since the requirement on "Federal Financial Limit on OMRR&R " has been omitted from the new Appendix F, is it correct to assume that this requirement is no longer applicable to Section 107 projects?

S5-A1. *Yes.*

S5-Q2. In accordance with the new Appendix F, request concurrence on the future course of action for a navigation project that is currently in the feasibility phase and is scheduled to be completed in FY 2006 under the GI Program. District is considering converting this specifically authorized project to the CAP Program since the estimated Federal share is within the per project statutory limits of our Section 107 authority. Subparagraph d of paragraph F-25 states the following: " ..within 90 days after the date of this Appendix, a Section 107 Project Fact Sheet

shall be submitted for each proposed Section 107 project that is already in the cost shared portion of the feasibility phase as of the date of this Appendix". Since we are not in a cost shared feasibility phase (Section 1156 waiver), we do not think we need to prepare a Section 107 fact sheet for OASA(CW) review. Please confirm.

S5-A2. *The timing for preparation of a Section 107 Project Fact Sheet is as follows: 1) for new projects implemented under the CA Program, the Fact Sheet should be submitted during the 100% Federally funded portion of the feasibility phase; and 2) for projects underway and for which a PCA has not been executed as of the date of the Appendix, the Fact Sheet should be submitted within 90 days of the date of the Appendix. The portion of the feasibility performed after the 100% Federally funded portion is considered the cost shared portion, regardless of whether the amount of funds the sponsor ultimately pays for feasibility is impacted by Section 1156 or not. Therefore, for the scenario described above, preparation of a Section 107 Project Fact Sheet should be the first item performed upon converting the project to the CA Program. Since the feasibility phase would have been completed under the GI Program, the next logical step for the project would be execution of a PCA for design and construction. The penultimate sentence of paragraph F-25.d. of Appendix F states the PCA shall not be executed until the OASA(CW) has concurred in proceeding with the project. The only mechanism for obtaining this concurrence is the Section 107 Project Fact Sheet.*

SECTION 6 – Appendix F, Paragraph F-32 - Section 1135, Water Resources Development Act of 1986, as amended – Project Modifications for Improvement of the Environment

S6-Q1: Paragraph F-15.c.(2) of Appendix F implies 80% of the non-Federal share of design and implementation may be WIK. What about the non-Federal share of feasibility? Are there 2 separate categories or is it based on total project costs? Paragraph F-32.d. says the non-Federal share of total project costs.

S6-A1: *The percentage of the sponsor's share that may be provided as WIK will depend on when the decision document is completed and approved:*

a. For new projects initiated after the effective date of the Appendix (31 January 2006): 1) pursuant to a FCSA, the sponsor may provide 100% of their share (50% of feasibility costs above the $100,000 Federally funded portion) of the feasibility costs as non-Federal feasibility work; and 2) pursuant to a PCA, the sponsor may provide 80% of their share of total project costs (as defined in the PCA - design and construction costs) as non-Federal design and construction work.

b. For projects where the decision document is completed and approved prior to 31 January 2006 – the feasibility costs are pulled into total project costs in the PCA and the sponsor's amount of non-Federal design and construction work is limited to 80% of their share of total project costs (as defined in the PCA – feasibility, design, and construction costs).

c. For projects where the decision document is completed and approved after 31 January 2006 but prior to 31 December 2006 (in accordance with paragraph F-1.b.1. of

Appendix F - no FCSA is required) – 1) the feasibility costs in excess of $100,000 are pulled into the PCA and shared 50/50; however, since all costs have already been incurred prior to an agreement the percentage of feasibility costs that may be WIK is zero and 2) pursuant to the PCA the sponsor's amount of non-Federal design and construction work is limited to 80% of their share of total project costs (as defined in the PCA – design, and construction costs).

S6-Q2: Paragraph F-32.e. of Appendix F says the non-Federal sponsor will pay for 1135 OMRR&R on Federal lands. Is this new policy?

S6-A2: *No, it brings guidance for Section 1135 into accord with law and policy which require that the costs of OMRR&R for new work are a non-Federal responsibility.*

S6-Q3: The guidance states adaptive management will not be performed for CAP, but it would be great if it could be done for Section 1135 and Section 206 projects. Restoration projects and particularly wetland restorations may need to be tweaked so it would seem very appropriate for adaptive management in at least these two programs to assure the Federal project's success.

S6-A3: *One of the factors used to determine if adaptive management should be considered for CA Program projects or not was that they are typically smaller scope than their specifically authorized projects counterparts and therefore, the risk and uncertainty of obtaining predicted outputs should be less.*

S6-Q4: It is still disappointing that Section 1135 has the restriction of WIK being limited to 80% of the non-Federal share. Especially since these projects are usually remediation of past Corps activities. This is something to keep in mind for a new WRDA.

S6-A4: *Noted.*

SECTION 7 – Appendix F, General - Section 1156 of the Water Resources Development Act of 1986 – Cost Sharing Provisions for the Territories

S7-Q1: If a sponsor is eligible for a Section 1156 waiver, does it increase the amount that can be spent before an FCSA is executed, or does it still require an FCSA to be executed while noting that the sponsor's financial responsibility may still be zero after the waiver is applied?

S7-A1: *If the total costs of the feasibility phase will exceed $100,000, then a FCSA should be executed, regardless of whether the amount of funds the sponsor ultimately pays for feasibility is impacted by Section 1156 or not. The Model Development Team is currently developing optional language that will be included in all CA Program models and the CAP FCSA to address the application of Section 1156.*

S7-Q2: How are we to implement this guidance (Appendix F) for projects that are currently in or about to initiate a plan & spec phase? Scenario: Decision document completed but no PCA. Project is in P&S phase but will not be completed by 31 Dec 2006. Project is eligible for cost

sharing waiver under Section 1156 of WRDA 86. Please confirm that a PCA must still be executed prior to continuation into the design & implementation phase.

S7-A2: *Yes, the PCA must be executed, regardless of whether the amount of funds the sponsor ultimately pays for the project is impacted by Section 1156 or not. The Model Development Team is currently developing optional language that will be included in all CA Program models and the CAP FCSA to address the application of Section 1156.*

S7-Q3: Section 1156 of WRDA 86 states the following: "The Secretary shall waive local cost–sharing requirements up to $200,000 for all studies and projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands." In the past the term "studies", as it relates to the CAP Program, would pertain to a project in a Feasibility or PDA Phase. The term "projects" would pertain to a project in the Construction Phase. Since the "old" PDA Phase included the feasibility and design effort would it be correct to assume the $200,000 waiver for the "studies" may be credited towards the total non-Federal share of the Feasibility cost and the total non-Federal share of the design portion of the "Design & Implementation" costs under the new guidance? Reference example below.
(i.e. If the total costs for the Feasibility Phase is $400,000, then the first $100,000 is initially Federally funded with the remaining balance ($300,000) cost shared at 50% Fed/50% non-Fed. Since the non-Fed share is $150,000 our $200,000 waiver would be able to cover the entire non-Fed share for the feasibility cost. Subsequently, we could apply the remaining balance of $50,000 from our allowable $200,000 waiver to the design cost portion of the "Design & Implementation Phase". If the total costs for the Design & Implementation Phase for a Section 206 project is $4,600,000 ($600,000-Design Cost, $4,000,000-Construction Cost), the appropriate cost sharing for the design portion of this project during this phase would be 35% non-Fed and 65% Fed or $210,000 non-Fed and $390,000 Fed respectively. However, subject to Section 1156 of WRDA 86 the non-Fed share would be reduced to $160,000 ($210,000-$50,000 remaining waiver amount) The implementation portion (Construction-$4,000,000) of this project would also be cost shared at 35% non-Fed/65% Fed or $1,400,000 non-Fed/$2,600,000 Fed. The $200,000 waiver for the "projects" would be credited towards the non-Fed share of $1,400,000 resulting in a final non-Fed cost share of $1,200,000.)

S7-A3: *The guidance for application of Section 1156 for a study is to first establish the sponsor's cost sharing responsibility based on the applicable cost sharing formula and then to reduce the sponsor's share by $200,000 or to zero. This same procedure is to be followed for implementation of the project (combination of design and construction costs). No excess waiver amount may be transferred from a study to implementation.*
Based on the example above:
The sponsor's ultimate share (amount they have to pay/provide) for the feasibility would be $0
Step 1 - (.50 x $300,000) = $150,000
Step 2 - ($150,000 - $200,000) = -$50,000 or $0
The sponsor's ultimate share (amount they have to pay/provide) for the design/construction would be $1,410,000
Step 1 - (.35 x $4,600,000) = $1,610,000
Step 2 - ($1,610,000 - $200,000) = $1,410,000